

Internal Revenue Service

Department of the Treasury

District  
Director

Delaware-Maryland District

31 Hopkins Plaza, Baltimore, MD 21201

Person to Contact:

Contact Telephone Number:

In Reply Refer to:

Date: MAR - 6 2000

CERTIFIED MAIL

Dear Applicant,

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code and have determined that you do not qualify for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

The evidence submitted disclosed that you are an association formed on A [REDACTED] that was organized for the purpose of promoting the writing, reading and interest of poetry by the attendees and by the general public.

Page 2 of Application 1023 states the activities of the association are:

To hold informal poetry readings at meetings that last for one hour. The readings are open to the public and typically [REDACTED] people attend each meeting. [REDACTED] percent of the association's time is devoted to this activity.

To present poetry readings on public cable TV once a month. This activity encompasses [REDACTED] percent of the association's time.

To publish a book of the group's poems, about [REDACTED] pages length, to commemorate your [REDACTED] year as a group. This will be an assisted self-publishing effort, for which you are seeking a grant to cover the cost of publication, possibly in the range of \$[REDACTED] \$[REDACTED]. In terms of time, nearly all of the [REDACTED], [REDACTED], is conducting the entire effort.

Attachment A to Application 1023 states: "The purpose of seeking 501(c)(3) exemption is to qualify for a [REDACTED] grant to [REDACTED] to cover our cost of self-publishing a book of the group's poems, commemorating the twentieth anniversary of the [REDACTED] as a group".

Income will be derived from book sales and a grant and will be expended for publication, TV production tapes and operations.

Section 501(c)(3) of the Internal Revenue Code provides for exemption from Federal income tax for organizations which are organized and operated exclusively for charitable, religious, and educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish such purposes. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. Thus, in construing the meaning of the phrase "exclusively for educational purposes" in Better Business Bureau v. United States, 326 U.S. 279 (1945), the Supreme Court of the United States stated, "This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations states that an organization is not organized or operated for any purpose under section 501(c)(3), unless it serves a public rather than a private interest. Thus to meet the requirements of this subparagraph, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization or persons controlled, directly or indirectly, by such private interests. Moreover, even though an organization may have exempt purposes, it will not be considered as operating exclusively for such purposes, if more than an insubstantial part of its activities serve private interests.

Old Dominion Box Co. v. United States, 477 F. 2d 340 (4<sup>th</sup> Cir. 1973), cert. Denied 413 U.S. 910 (1973) held that operating for the benefit of private parties constitutes a substantial nonexempt purpose.

Leon A. Beeghly v. Commissioner, 35 T. C. 490 (1960), provided that where an exempt organization engages in a transaction with a related interest and there is a purpose to benefit the private interest rather than the organization, exemption may be lost even though the transaction ultimately proves profitable for the exempt organization.

In P.L.L. Scholarship v. Commissioner, 82 T.C. (1984), an organization operated bingo at a bar for the avowed purpose of raising money for scholarships. The board included the bar owners, the bar's accountant, also a director of the bar, as well as two players. The board was self-perpetuating. The Court reasoned that since the bar owners controlled the organization and appointed the organization's directors, the activities of the organization could be used to the advantage of the bar owners. The organization claimed that it was independent because there were separate accountings and no payments were going to the bar. The Court was not persuaded.

A realistic look at the operations of these two entities, however, shows that the activities of the taxpayer and the Pastime Lounge were so interrelated as to be functionally inseparable. Separate accountings of receipts and disbursements does not change that fact.

The Court went on to conclude that the organization had a substantial nonexempt purpose.

In KJ's Fund Raisers, Inc. v. Commissioner, T. C. Memo 1997-424 (1997), affirmed 82 AFTR 2d 7092 (1998), the Tax Court found that another gaming organization was not exempt. While the organization raised money for charitable purposes, it also operated for the substantial benefit of private interests. The organization's founders Kristine Hurd and James Gould, were the sole owners of a bar, KJ's Place. The organization, through the owners and employees of KJ's Place, sold lottery tickets exclusively at KJ's Place during regular business hours. While in KJ's Place the lottery ticket purchasers were sold beverages from the bar. The initial directors were Hurd, Gould and a related individual. The initial board was replaced several times until Hurd and Gould were no longer on the board. At all times Hurd and Gould were the organization's officers. Salaries had been paid to Hurd and Gould and rent had been paid to KJ's Place. The organization maintained that the fact that salaries and rent were no longer paid in this fashion indicated the independence of the board. The Court took another view.

Although those practices ceased and are not in issue here, the current board of directors is composed of at least the majority of the same members who allowed those amounts to be paid. This strongly suggests that Hurd and Gould are free to set policy for their own benefit without objection from the board. Nothing in the record since July 1, 1994 indicates otherwise.

The Court concluded that KJ's Fund Raisers was operated for substantial private benefit and did not qualify for exemption. The Court of Appeals affirmed the decision. It found that the organization had served the private interests of its directors in maintaining and augmenting their business interest.

In Carrie A. Maxwell Trust, Pasadena Methodist Foundation v. Commissioner, 2 TCM 905 (1943), it was held that a trust set up for the benefit of an aged clergyman and his wife was not an exempt organization. Despite the fact that the elderly gentleman was in financial need, this was a private trust, not a charitable trust because it was created and operated for the benefit of specified persons.



A charitable organization or trust must be set up for the benefit of an indefinite class of individuals, not for specific persons. A trust or corporation organized and operated for the benefit of specific individuals is not charitable, regardless of an established financial need.

Further clarification of your activities, in your letter dated [REDACTED] you state: "Our poetry anthology, provisionally titled [REDACTED], is a collection of [REDACTED] poems by [REDACTED] poet members of the [REDACTED]." "It is likely that a majority of books will be sold by some twenty-odd individuals persons who are the contributors to the book." "Since the requested grant of \$[REDACTED] will cover only [REDACTED] of the printing cost, the members of the [REDACTED] will have to make up the remaining \$[REDACTED] cost from their own pockets. Therefore, they will wish to sell books in order to *recover their own expenses*." "But in establishing the price, a *major consideration* will be a per-book figure likely to enable *us to recover our costs*." "This is a one time publication".

The facts revealed that the primary reason the organization was formed is to secure a grant to reimburse the members for expenses incurred by them to publish their literary works. While the publication of the poems may be educational the *excessive private benefit to the members* is substantial in nature and defeats exemption.

Based on the cited precedence we hold your organization is not operated within the purview of 501(c)(3) of the Internal Revenue Code.

Hence, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(3) of the Code. In accordance with this determination, you are required to file Federal income tax returns on Form 1120.

Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code.

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate State officials.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If someone who is not one of your principal officers will represent you, that person will need to file a power of attorney or tax information authorization with us.

[REDACTED]

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination in this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies. Section 7428(b)(2) of the Code provides, in part, that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Appeals submitted which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone phone number are shown in the heading of this letter.

Sincerely,

*Steven T. Miller*

Steven T. Miller  
District Director

Enclosure: Publication 892

cc: [REDACTED]

[REDACTED]